

AB 205 (Goldberg, Kehoe, Koretz, Laird, Leno, and Senator Kuehl)

The Domestic Partner Rights and Responsibilities Act of 2003

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AB 205 will provide registered domestic partners with a number of significant new rights, benefits, responsibilities, and obligations.

BACKGROUND AND PURPOSE

According to the 2000 Census data, there are almost 100,000 households headed by same-sex partners in California¹. Many of these couples are raising children together. Since the establishment of California's domestic partner registry in 1999, 20,279 same-sex and senior different-sex couples have registered with the state as domestic partners.

Same-sex couples and senior couples in California who are registered as domestic partners are currently granted approximately fifteen separate rights and responsibilities. There remain hundreds of provisions of state law that grant certain privileges or responsibilities to married couples, and treat unmarried couples, even those registered as domestic partners, as legal strangers.

There is simply no good reason to deny those additional rights and duties to registered, committed domestic partners and their children. Granting these rights and responsibilities will further the state's interest in promoting stable and lasting family relationships, and will protect family members from the economic and social consequences of abandonment, separation, the death of loved ones, and other life crises. It will also protect couples, the children they are raising, third parties, and the state from numerous harms and costs.

SUMMARY

AB 205 will significantly expand the rights and responsibilities currently provided to registered domestic partners and their families to include nearly all the legal rights, benefits, responsibilities, duties, and obligations under state law currently available only to spouses. Those legal protections and responsibilities guide couples through nearly every complex legal situation faced by families such as death, divorce, custody disputes, illness, childbirth, and adoption. Those laws regulate such diverse areas as:

- **Financial support** during and after the relationship, and community property ownership protections
- **Protection from threats and crimes** against the families of public officials
- **Child custody**, visitation, and duties of financial support of children
- **Anatomical gifts**, consent to autopsy and disposition of remains, and burial in family cemeteries
- **Mutual responsibility for debts** to third parties
- **Obligations to make disclosures** regarding family relationships and to take other steps to avoid nepotism, conflicts of interest and self-dealing

¹ Researchers believe this is an undercount.

- **Housing protections**, including access to family student housing, senior citizen housing, and rent control protections
- **Government-regulated benefits**, including workers compensation, public assistance, transfer of licenses upon death, and the ability to apply for absentee ballots for a partner
- **Communication privileges**, including the right not to be forced to testify against a partner
- **Legal claims** dependent upon family status, including claims for victim's compensation

AB 205 will **not** change the method for entering into domestic partnership.

AB 205 will **not** change the basic criteria for registering as domestic partners.

AB 205 will **not** change or affect federal laws.

AB 205 will **not** change the way domestic partners file their taxes.

HISTORY OF DOMESTIC PARTNERSHIP IN CALIFORNIA

The concept of domestic partnership has been well-established in California for many years. Since **1984**, numerous California cities, beginning with Berkeley, paved the way for the rest of the nation in establishing domestic partner registries.

In **1999**, AB 26 (Migden) was passed, establishing the statewide domestic partner registry and hospital visitation, and granting health benefits to domestic partners of state employees.

In **2001**, AB 25 (Migden) granted approximately twelve new rights and benefits to domestic partners, including the right to sue for wrongful death, to use employee sick leave to care for an ill partner or partner's child, to make medical decisions on behalf of an incapacitated partner, to receive unemployment benefits if forced to relocate because of a partner's job, and to use stepparent adoption procedures to adopt a partner's child. Also, SB 1049 (Speier) granted San Mateo County the ability to offer death benefits to surviving domestic partners of county employees.

In **2002**, AB 2216 (Keeley) granted the right to automatic inheritance of a specified portion of a partner's separate property if a partner dies without a will. AB 2777 (Nation) permitted three more counties to offer death benefits to surviving domestic partners, and SB 1575 (Sher) included domestic partners among the family members exempted from the current prohibition on receiving from a will that one helped to draft. Also, SB 1661 (Kuehl) granted 6 weeks of paid family leave to employees to care for a sick spouse or domestic partner.

In other words, registered domestic partners in California are currently granted a small but significant base of benefits and rights. There is no legitimate reason to deny them access to the hundreds of other rights, and more importantly, *responsibilities*, that are currently granted only to married couples.

OTHER STATES AND COUNTRIES

Vermont currently has the broadest protections for same-sex couples, through its system of civil unions, enacted in 2000. Vermont also has a system called "reciprocal beneficiaries", in which two blood relatives may receive approximately ten rights and benefits, including the right to hospital visitation and health care coverage.

Hawaii allows any two adults who are legally prohibited from marrying to enter into a relationship called "reciprocal beneficiaries," which grants a limited range of rights and benefits.

A number of states, including **Alaska, Arizona, Connecticut, Delaware, Maine, Massachusetts, Minnesota, Nevada, New York, Oregon, Rhode Island, Washington**, and the **District of Columbia**, confer a range of limited benefits on domestic partners.

The legislatures of at least seven other states, including **Connecticut, Colorado, Hawaii, Massachusetts, Nevada, Rhode Island, and Washington** are currently considering or have recently considered same-sex marriage, civil union, or domestic partnership bills.

The Netherlands is the only country in the world that permits same-sex couples to marry. However, many countries across the world, including **Belgium, Canada, Finland, Hungary, Norway, South Africa and Switzerland** have established or are in the process of establishing systems of “registered partnerships” for same-sex couples that grant them a significant level of benefits and responsibilities. Nations with systems similar to the one proposed in AB 205 include **Brazil, Denmark, France, Germany, Greenland, Iceland, Portugal, and Sweden.**

FISCAL IMPLICATIONS

AB 205 will not result in substantial costs to the state. Similar studies done in Vermont and Connecticut² demonstrate that granting significant new rights and responsibilities to same-sex partners have either a neutral fiscal impact or result in cost savings. In California, the current domestic partner rights and benefits already available cover most of the items, such as the costs of setting up the new system, creating forms, and providing unemployment insurance to partners relocating, that would result in costs to other states.

The responsibilities and rights that would be added through AB 205 will for the most part help domestic partners to rely on each other more, as they act and are treated as a financial unit, thereby reducing their reliance on the state. In this time of budget crisis, it is more clear than ever that we cannot afford the costs of discrimination.

The responsibilities imposed by the bill will assist private financial institutions in recovering debts. Currently, banks and other creditors are unable to recover their losses created by one person by holding that person's domestic partner responsible for his/her debts. Under AB 205, registered domestic partners will be responsible for each other's debts and other financial obligations.

AB 205 AND PROPOSITION 22

AB 205 does not conflict with Prop. 22 (The “Knight Initiative”), which was passed by California’s voters in March 2000. *A March 2003 Legislative Counsel opinion found that “following the enactment of AB 205, the definition of marriage under California law would be unchanged. Same-sex partners in California would not be allowed to marry but would only be authorized, as they are today, to enter into a domestic partnership.”*³ The Knight initiative stated that California would only recognize as valid out-of-state marriages that were between a man and a woman. It said nothing about the rights of same-sex domestic partners within California – in fact, proponents of Prop. 22 made it clear to Californians that the initiative would *not* interfere with the rights of domestic partners or prevent future laws that did not alter the definition of marriage. In a March 6, 2000 interview with Paula Zahn on Fox television, “Yes on 22” spokesman Robert Glazier stated clearly, “Proposition 22 was so narrowly defined with just 14 words, not just for simplicity’s sake, but for the legal impact. **It will not affect domestic partnership rights.**”

Domestic partnership will clearly remain a distinct institution from marriage:

² University of Massachusetts Economics Professor M.V. Lee Badgett, “The Fiscal Impact on Vermont of Allowing Same-Sex Couples to Marry,” October 1998; Report of the Vermont Civil Union Review Commission, January 2001; Connecticut General Assembly Office of Fiscal Analysis report on the fiscal impact of civil unions, October 4, 2002.

³ Legislative Counsel of California, “Domestic Partners: Initiative Amendment,” March 2003.

- Domestic partnership will continue to be entered into and, for many people, exited in a different way than marriage
- Domestic partner rights may not be recognized outside California
- The federal government will not recognize domestic partners for the 1,049 federal rights and benefits associated with marriage
- Domestic partners will not be able to file their state or federal taxes jointly
- Domestic partnership is a separate, established institution in California, with a distinct history and social meaning from marriage

This bill is sponsored by Equality California. Other advocacy organizations that collaborated on the drafting of this bill include Lambda Legal Defense and Education Fund, National Center for Lesbian Rights, and ACLU.

STATUS:

BILL HISTORY

2003

Sept. 3 Senate amendments concurred in. To enrollment.

Aug. 28 In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 30 pursuant to Assembly Rule 77.

Aug. 28 Read third time, passed, and to Assembly. (Ayes 23. Noes 14. Page 2206.)

Aug. 27 Read second time. To third reading.

Aug. 26 From committee: Do pass. (Ayes 7. Noes 4.).

Aug. 21 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR.

Aug. 18 From committee chair, with amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR. In committee: Testimony taken: Hearing postponed by committee.

July 16 Read second time, amended, and re-referred to Com. on APPR.

July 15 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 4. Noes 3.).

July 3 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on REV. & TAX.

July 2 From committee: Do pass, and re-refer to Com. on REV. & TAX. Re-referred.

June 19 Referred to Coms. on JUD. and REV. & TAX.

June 5 In Senate. Read first time. To Com. on RLS. for assignment.

June 4 Assembly Rule 69(d) suspended. Read third time, passed, and to Senate. (Ayes 41. Noes 32. Page 2230.)

June 3 Read second time. To third reading. Assembly Rule 69(b)(1) suspended. Read third time, amended, and returned to third reading.

June 2 From committee: Amend, and do pass as amended. (Ayes 17. Noes 7.) (May 28). Read second time and amended. Ordered returned to second reading.

Apr. 30 In committee: Set, first hearing. Referred to APPR. suspense file.

Apr. 2 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 9. Noes 4.) (April 1).

Mar. 26 Re-referred to Com. on JUD.

Mar. 25 Re-referred to Com. on JUD. From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.

Mar. 24 From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.

Mar. 4 In committee: Hearing postponed by committee.

Feb. 3 Referred to Com. on JUD.

Jan. 29 From printer. May be heard in committee February 28.

Jan. 28 Read first time. To print.